

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK05-40061
)	
LARRY E CARLSON and)	
KAREN M. CARLSON,)	CH. 12
)	
Debtor(s).)	Filing No. 64, 70

ORDER

Hearing was held in Omaha, Nebraska, on September 26, 2005, regarding Filing No. 64, Motion for Relief from Stay, filed by BCD Farms, Inc., and Filing No. 70, Resistance, filed by the debtors. Galen E. Stehlik appeared for the debtors and James Nisley appeared for BCD Farms, Inc.

BCD Farms, Inc., has filed a motion for relief from the automatic stay requesting the court to authorize it to proceed with state court litigation which was pending on the petition date. In that state court litigation, BCD Farms, Inc., as plaintiff, has sued the debtors and their affiliated corporation for monetary damages resulting from negligence and conversion.

The debtors have listed the monetary claim of BCD Farms, Inc., in their schedules and have included that entity in the plan as a pre-petition unsecured creditor. BCD Farms, Inc., has objected to the plan.

It is the position of BCD Farms, Inc., that it is necessary for a court to determine whether the debtors and their affiliated corporation converted cattle owned by BCD Farms, Inc., so that BCD Farms, Inc., can present evidence of the conversion in support of its position in the bankruptcy litigation that the filing of the case and filing of the plan are not in good faith. It is further the position of BCD Farms, Inc., that if it is eventually determined that the debtors and their affiliated corporation did convert the cattle, no plan can be confirmed without payment of the debt resulting from the conversion.

The court reserved ruling on the offer of the Bickford affidavit at filing 67, on the objection as to relevance and hearsay. After review of the document, the objection is granted and the exhibit is not admitted.

The motion for relief from stay is denied. The issue in this case regarding confirmation of a Chapter 12 plan is whether the plan is filed in good faith. BCD Farms, Inc., an objector to the plan, can present all of its evidence concerning conversion in the litigation with regard to the confirmability of the plan. If the bankruptcy court finds that the debtors and their affiliated company did tortiously convert the animals to the detriment of BCD Farms, Inc., the court will then determine whether such tortious act should result in denial of the Chapter 12 plan under the "good faith" standard.

There is no need for the debtors to expend funds in a state court trial when the limited issue is one of good faith with regard to confirmation of a Chapter 12 plan.

As stated above, the motion for relief from the automatic stay is denied.

SO ORDERED.

DATED this 30th day of September, 2005.

BY THE COURT:

/s/ Timothy J. Mahoney

Chief Judge

Notice given by the Court to:

Galen E. Stehlik

*James Nisley

Richard Lydick

U.S. Trustee

*Movant is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.